

Boatyard General Permit *Advisory Committee* August 4, 2003, Meeting Minutes

Attendees:

Name	Affiliation	Street Address	City & Zip	Phone	E-Mail
Barry Kellems	HartCrowser	1910 Fairview Avenue E	Seattle 98102-3699	206-324-9530	barry.kellems@HartCrowser.com
Michelle Kruse	NW Marine Trade Association	1900 N. Northlake Way, Suite 233	Seattle 98103	206-634-0911	kruse@nmta.net
Scott Smith	WA Dept. Fish & Wildlife	P.O. Box 1180	Port Townsend, 98368	360-902-2724	smithsss@dfw.wa.gov
Cliff Webster	Carney Badley Spellman	700 5th Ave. #5800	Seattle, Washington 98104-5017	206-607-4162	cwebster@carneylaw.com
John Papajani	Seaview Boatyard	4701 Shilshole Avenue NW	Seattle 98107	206-789-3030	john@seaviewboatyard.com
Dick Britton	Penmar Marine	2011 Skyline Way	Anacortes, 98221-2953	360-293-5134	penmar@fidalgo.net
Timothy M. Goodman	WA Dept. Natural Resources	1111 Washington ST SE	Olympia 98504-7027	360-902-1100	tim.goodman@wadnr.gov
Dean Shaughnessy	Port of Everett	P.O. Box 538	Everett 98206	425-259-6001	deans@portofeverett.com
Greg Cloud	WA Dept of Ecology, Puget Soundkeeper	300 Desmond Drive	Lacey 98503	360-407-6291	gclo461@ecy.wa.gov
Sue Joerger	Alliance	4401 Leary Way NW	Seattle 98107	206-297-7002	suejoerger@pugetsoundkeeper.org
Michael Campbell	NW Marine Trade Association	1900 N. Northlake Way, Suite 233	Seattle 98103	206-634-0911	michael@nmta.net
John Drabek	WA Dept of Ecology, NWRO	3190 - 160th Ave. SE	Bellevue 98008-5452	425-649-7293	jdra461@ecy.wa.gov
Donna Ortiz de Anaya	WA Dept of Ecology, NWRO	3190 - 160th Ave. SE	Bellevue 98008-5452	425-649-7276	dort461@ecy.wa.gov
Dewey Weaver	WA Dept of Ecology	PO Box 47600	Olympia 98504-7600	360-407-6443	duwe461@ecy.wa.gov
Randall Marshall	WA Dept of Ecology	PO Box 47600	Olympia 98504-7600	360-407-6445	rmar461@ecy.wa.gov

Actual Agenda:

- 10:00 - Introductions
- 10:15 - Introduced species risks (with Scott Smith)
- 10:45 - Review of minutes from May 28 meeting
- 11:00 - Quick update on marina lease language and on resending the divers advisory
- 11:15 - Update on boatyard permit status
- 11:30 - ~~Hazards and liabilities associated with copper~~ Update on boatyard permit status continued
- 12:30 - Lunch
- 1:30 - The summary judgment and its potential consequences (with Ron Lavigne)
- 2:30 - Prompt adjournment

Meeting:

After introductions, Scott Smith (Aquatic Nuisance Species Coordinator for WDFW) gave a presentation on the potential for boats and ships to introduce non-native species into state waters. Introduced species have caused a lot of environmental and economic damage around the world. Hull cleaning can be as bad or worse than ballast water for introducing non-native species. Hull cleaning can also help move already introduced species around the state and encourage their spread into new areas. Regular hull cleaning is definitely a good idea for preventing the introduction or spread of non-native species but only if it is done onshore where the waste can be collected and treated. Randall Marshall noted that this issue may eventually be the deciding factor in the acceptability of in-water hull cleaning by divers.

The only comments on the May meeting minutes were from Barry Kellems on the proposed performance-based limit and then a response by Sue Joerger. Barry's comments are included in an e-mail attached to the end of this document. A summary of Sue's comments follow Barry's e-mail.

The draft marina lease language changes were reviewed. Randall Marshall asked that particular attention be paid to the list of "boatyard activities" which would require coverage under the boatyard permit. Attendees noted that more specificity would be helpful when an activity such as painting or coating is included both in the allowed list (if 25% or less of the vessel's surface area above the waterline) and in the list of activities requiring coverage under the boatyard permit. The "25% or less" condition needs repeated in both lists to avoid confusion from incomplete reading. Another commenter stated that joinery should also be allowed under the 25% or less condition and that the current language requires a permit for all joinery work. A suggestion was made that the allowance of in-water hull cleaning of hard paints should state that it is subject to future changes. These suggested changes will be made and the final version delivered to WDNR for inclusion in a revised Exhibit B for marina leases.

A suggestion was made that the cover letter for resending the divers advisory to marinas should include a list of the "boatyard activities" needing coverage under the boatyard permit. The letter should also mention introduced species concerns and express doubt about the future of in-water hull cleaning. Advisory committee members should send the addresses of marinas (especially marinas not under a WDNR lease) to Randall Marshall by August 29, 2003.

The advisory committee was told that the Water Quality Program (WQP) wanted input on whether to proceed with writing a boatyard permit or to delay pending the resolution of legal issues arising from a Pollution Control Hearings Board (PCHB) summary judgment. The resolution of these legal issues could take two to three years.

The delay could be used to help boatyards get into compliance with Water Quality Standards (WQS). Orders could be given to the boatyards to each submit a plan within a year that details how compliance with WQS will be achieved. In addition to the source control BMPs, compliance might be achieved by treating and discharging to surface water or to ground. A surface water discharge might need a mixing zone to achieve compliance and the site-specific information would need to be generated for a WQP decision on whether to grant a mixing zone or not. Plans for discharges to ground would need to consider site-specific characteristics and also specify monitoring. A discharge to sanitary sewer might be arranged and would likely require some treatment prior to discharge. Some boatyards might be roofed and stormwater discharge prevented. Each boatyard would need to make a good decision on which route to take. During the delay, NMTA and the WQP could give as much technical assistance as possible to boatyards in making the decision. One idea is a "technology fair" at NMTA where vendors, consultants, and regulators could be available to give demonstrations and answer questions. A delay would give the boatyards what they most need at this point: time to make the right decision, make a plan, seek funding, and come into compliance with WQS before the permit makes it an enforceable requirement through penalties or citizen suits.

The WQP regional office staff on the advisory committee noted that a delay and orders would be a big increase in workload. The orders themselves would be a lot of work and might be appealed by some boatyards making even more work. A delay would mean that the regions would need to write individual permits for any new boatyard that applies. Reviewing the plans required from marinas by the revised lease language would also increase workload. Workload increases are a big issue. A comment was made on the workload issue that perhaps the boat fees collected by counties could be used to fund the regulation of boatyards and marinas.

The advisory committee members were asked to provide e-mail comments on proceeding with a boatyard permit or delaying. They were also asked to provide comments on the orders which might be used as described above in the case of a delay in permit writing. A request might be made for another meeting soon to discuss the legal issues relevant to delaying or proceeding with a permit with at least three attorneys present: Cliff Webster for NMTA, Rick Smith for PSA, and Ron Lavigne for the WQP. A deadline of a week was given for sending the e-mail comments. These comments have been received and are attached to the end of these minutes and will be used by the WQP to make a decision on the timing of the permit writing.

Ron Lavigne, AG for the WQP, gave the advisory committee an overview of the summary judgment. The PCHB issued summary judgments on three issues. One judgment said that the granting of a mixing zone had to be made on a site-specific basis by the WQP. Another said that provisions for modification of requirements by notification from the WQP were not lawful under circumstances that equated to a major permit modification. A third judgment said that compliance schedules for existing stormwater discharges could be at most three years and might be zero years if the discharge has already been under permit for longer than three years. The compliance schedule judgment needs

clarification through the legal process. Ron said that any boatyard permit written now to be in accordance with the summary judgment would very likely be unacceptable to boatyards and be appealed.

Even though the PCHB final ruling on all issues arising from the appeal of the industrial stormwater general permit was not expected for a month or two, it arrived a few days after the boatyard advisory committee meeting. The final ruling dealt with monitoring issues and the benchmarks in the permit. The PCHB expressed concern about the potential of copper to cause environmental harm and struck down the copper benchmark as inadequately protective due to being ten to eighteen times the WQS. The benchmark for copper in the industrial stormwater permit was 63.6 ug/L (0.0636 mg/L). The final ruling was distributed to boatyard advisory committee members by e-mail on August 7, 2003.

Advisory Committee Views on Whether to Proceed with Permit or Delay:

Randy,

Let me say that I appreciate your efforts in getting a new permit written. Your task is a difficult one that is now further complicated by the recent PCHB summary judgment. I believe the Boatyard Advisory Committee meetings have provided an excellent forum for interested parties to present the views and get their questions answered. Many of our differences have been explored and our respective positions modified. We know where each other stands, now we just need to stand together on some common ground.

So, as the saying goes, it's time to fish or cut bait. I say we keep cutting bait. The waters are too muddy now for us to come up with a good workable permit that is acceptable to all sides. The thin middle ground between the parties is hard enough to delineate without the uncertainty of the PCHB judgment.

During the delay we should all work together to come up with technical solutions that are both economically viable and ecologically sound. I support bringing in the manufacturers of treatment and cleaning equipment to work with us so boatyard owners, environmentalists and the DOE can see what products are available. The financial rewards for the best products/solutions will be substantial so we should get excellent cooperation from the manufacturers. Seaview Boatyard would be happy to use Seaview West at Shilshole Bay Marina as a test site if needed.

Also, one year to get the plan ready might be a little tight but if we're all working together you'd see the progress and could adjust the deadline as necessary.

Thanks again for your efforts.

John Papajani

Business Manager

Seaview Boatyard

john@seaviewboatyard.com

Randy,

Per your request at the 8/4 Boatyard Advisory Meeting, I am sending the following comment on behalf of the NMTA regarding the possibility of a permit delay:

Ecology should delay writing a boatyard permit until legal issues arising from the appeals of the industrial stormwater general permit and summary judgment have been resolved. If a boatyard general permit were written and issued prior to resolution of the industrial general permit, the amount of uncertainty related to the compliance schedule for meeting water-quality based standards would open the boatyards up to significant legal and economic risk. Furthermore, the delay can be used by the boatyards to plan for the permit. Your proposal for an administrative order that would require all boatyards to develop and submit plans within a year showing how they would meet water quality standards for copper appears to be reasonable, although Ecology will need to provide the report card, training opportunities and the incentive for the boatyards to participate in the training for this effort to be successful. The NMTA is willing to work with the Puget Sound Keepers Alliance and Ecology to organize and / or coordinate education and training of the boatyards starting immediately.

Thanks for this opportunity to comment on behalf of the NMTA.

Barry Kellems, P.E.

Principal, Environmental Engineer

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Hi all:

Here are PSA's (Puget Soundkeeper Alliance) opinions on the issues raised below.

1) PSA supports writing of the Boatyard Permit now. I do not think waiting for 2 or 3 years is appropriate given the significant water quality challenges presented by boatyard discharges. I do think we will have to pay close attention to the significant legal issues and seek counsel from our lawyers as we proceed so we are certain that we are adhering to our best or common interpretations of the PCHB order.

2) PSA agrees that we should move forward with reducing the discharge of copper from boatyards now. If we delay, it is going to make compliance with water quality standards more challenging because there will be less time for boatyards to understand site specific challenges and the limitations of BMPs. I am concerned about the administrative order, because in the meeting I clearly heard Ecology staff say that issuing the order for 120+ facilities would be extremely time intensive. I'm also not certain that it was clear to the boatyards that this order would state that they were violating water quality standards for copper. I'd much rather see our efforts go into writing a permit that is legally defensible, protects the environment and gives boatyards the tools needed to take care of copper. Finally, I think training and technical assistance would be essential for monitoring requirements, BMP implementation etc. PSA would certainly be interested in assisting where we could in this effort in partnership with Ecology and NMTA.

Finally, I think that given that boatyards are going to have to comply with water quality standards for copper in the near future and may need to make significant investments to do so, I think the Advisory Committee must request that Ecology require all other copper dischargers - divers, boat owners, marinas, etc. to be somehow covered under an NPDES permit that, at the very least, limits or stops their discharges of copper similar to that of boatyards. I also think there is a significant need for boater education and incentives to do the right thing.

Thanks!

Sue Joerger
Puget Soundkeeper Alliance
4401 Leary Way NW
Seattle, WA 98107
206-297-7002
206-297-0409 FAX

Sue,

I appreciate your comments and concerns.

I too am in favor of continuing to work toward writing a permit that is acceptable to all parties. As I expressed to Sue after the last meeting, in my opinion, there is a huge difference between a boat yard who is providing a service to the general public and what is taking place at an industrial site, and I believe it important to keep this in perspective.

After a quick review of the PCHB findings, my first thoughts are that I would like to hear Ecology's opinion on the ruling. (Possibly a 1 hour summary.) Then to save time, it may make sense for the boat yard operator's to meet with Hart Crowser and NMTA to discuss concerns and thoughts, followed by a couple hours of the entire committee discussion to identify each stakeholder's recommendation.

Randall, might you then be prepared to write a draft permit that gives us a starting point?

Dean Shaughnessy
Marina Operations Manager
PORT OF EVERETT
(425) 388-0680

Howdy,

I believe that we (Dept. of Ecology and AG) gave as many of our opinions on the ruling as we have right now. We are a bit divided and uncertain actually. That is why we sought opinions from the advisory committee members on whether

to proceed now with a permit or to wait until legal issues have been resolved and use the meantime to help get boatyards ready to take action under the eventual permit. One side issue is whether to have a meeting soon with everybody's attorneys present to focus on the pros and cons of delay. Another issue which arises from a decision to delay is whether to issue orders to the boatyards requiring development of plans describing how water quality standards will be met, especially for copper.

All recommendations from stakeholders should focus on whether to proceed or delay and the related side issues. I can begin writing a draft permit as soon as the Water Quality Program decides to start but for now it is premature to dwell on it at length except to note that it must contain a water quality-based copper limit with a short(?) compliance schedule and mixing zones only on a site-specific basis. The summary judgment and final ruling have taken away much of the room for negotiation that existed before.

If you have already sent an opinion, feel free to send additional messages elaborating or even changing your mind. I will be on vacation for a week beginning next Wednesday and will send the minutes and attached opinions before I go.

Randall Marshall
WET Coordinator
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I will make this very short. I propose we move forward and get it over with. There will be an appeal 2 or 3 years down the road so it will happen anyway. I also as stated at the last meeting am NOT in favor of any Order on the issue.

Greg Cloud
Water Quality Program
Southwest Regional Office

Comments on May Meeting:

Randy,

Please consider the following comment on the 5/28/03 meeting minutes.

The minutes discuss a Performance Standard of 2.3 mg/L based on the 95th percentile concentration. This value would result in 34% of the boatyards being out of compliance based on the previous data. A more appropriate non-compliance frequency would be 25 percent. I had suggested a 25% non-compliance frequency for the performance standard in a previous meeting and was not present during the lunch discussion on 5/28/03 where it was decided that the 2.3 mg/L criteria would be acceptable.

Furthermore, rather than throwing out all the data for the top 10 and bottom 10 boatyards before calculating the 95th percentile, it would be more appropriate to throw out only the upper 2% and lower 2% of sample data as outliers. This would result in a more representative 95th percentile of 3.4 mg/L. The 2% percent outlier criteria is more statistically reasonable than the 10% criteria, which results in a loss of 34% of the sample results.

Thank you for allowing me to submit this comment.

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Note – Sue Joerger responded during the August 4th meeting to the comments made by Barry Kellems on the performance-based limit described in the May 28th meeting minutes. Barry's comments during the meeting were very similar to his e-mail above. Sue in her response wanted to make sure that it was made clear that PSA opposed a performance-based limit of 2.3 mg/L of copper because it is many times higher than the water quality criteria for copper. (2.3 mg/L of total recoverable copper is about 400 times the acute criterion for copper and about 600 times the chronic.) Sue requested that these minutes reflect her comments on the subject.